

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,  
as representative of  
THE COMMONWEALTH OF PUERTO RICO, *et al.*,  
Debtors.<sup>1</sup>

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,  
as representative of  
THE COMMONWEALTH OF PUERTO RICO,  
Plaintiff,  
v.  
AMBAC ASSURANCE CORPORATION, *et al.*,  
Defendants.

PROMESA  
Title III

No. 17 BK 3283-LTS  
(Jointly Administered)

Adv. Proc. No. 20-00003-  
LTS

<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801).

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,

Plaintiff,

v.

AMBAC ASSURANCE CORPORATION, *et al.*,

Defendants.

Adv. Proc. No. 20-00004-  
LTS

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,

Plaintiff,

v.

AMBAC ASSURANCE CORPORATION, *et al.*,

Defendants.

Adv. Proc. No. 20-00005-  
LTS

**JOINT STATUS REPORT REGARDING DISCOVERY  
IN THE REVENUE BOND ADVERSARY PROCEEDINGS**

To the Honorable United States Magistrate Judge Judith Gail Dein:

Ambac Assurance Corporation (“Ambac”), Financial Guaranty Insurance Company (“FGIC”), Assured Guaranty Corp. and Assured Guaranty Municipal Corp. (collectively, “Assured”), and National Public Finance Guarantee Corporation (“National”), The Bank of New York Mellon (“BNYM”), U.S. Bank Trust National Association (“U.S. Bank”, and collectively with Ambac, FGIC, Assured, National, and BNYM, the “Defendants”), and the Financial Oversight and Management Board for Puerto Rico (the “Board”), as Title III representative of the Commonwealth of Puerto Rico (the “Commonwealth”) pursuant to section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), and the Government Entities<sup>2</sup> (together, with Plaintiff, the “Government”), respectfully submit this Joint Status Report in response to the Court’s Order dated February 5, 2021 (ECF No. 15809) concerning discovery in the adversary proceedings (the “Adversary Proceedings”) regarding bonds issued by the Puerto Rico Infrastructure Finance Authority (“PRIFA”), the Puerto Rico Convention Center District Authority (“CCDA”), and the Puerto Rico Highways and Transportation Authority (“HTA”).

**JOINT STATUS REPORT**

1. This Joint Status Report is submitted pursuant to the Court’s April 19, 2021 Order (ECF No. 16465), which, among other things, ordered the Parties to “file a joint status report on the overall progress of discovery by April 29, 2021.” Pursuant to the deadlines set forth in the Court’s *Order Modifying Discovery Schedule* (ECF No. 16365), the deadline for the Government

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<sup>2</sup> “Government Entities” refers to the Commonwealth’s agencies and instrumentalities on which Defendants served subpoenas in these Adversary Proceedings, including the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), the Puerto Rico Government Development Bank, the Puerto Rico Department of Treasury, HTA, PRIFA, CCDA, and the Puerto Rico Tourism Company. The Commonwealth, by and through the Board, as its Title III representative, in these cases is the “Plaintiff.” Unless otherwise indicated, all ECF numbers referenced herein refer to the docket in Case No. 17 BK 3283-LTS.

to complete its document production was April 26, 2021 and the deadline for the completion of fact discovery is May 19, 2021.

## I. THE PARTIES' PROGRESS SINCE THE APRIL 16 JOINT STATUS REPORT<sup>3</sup>

2. Since the April 16 Joint Status Report, the Parties have continued to exchange correspondence<sup>4</sup> and met-and-conferred telephonically on April 20, 2021.

### A. Document Discovery

3. The Government believes it has responded appropriately to all written discovery propounded by Defendants (including Requests for Documents, Interrogatories and Requests for Admission) and, from the Government's perspective, completed the production of the documents it agreed to produce by the Court's April 26, 2021 deadline. As stated in the Parties' April 16 Joint Status Report, Defendants believe certain documents have been improperly withheld and are moving to compel. The Government disagrees and will oppose Defendants' motion. Further, the Government is filing a motion for a protective order concurrent with Defendants' motion to compel.

4. On April 28, 2021, Defendants sent the Government a letter noting gaps in the Government's production and issues on which Defendants are awaiting a response from the Government. As the Government will explain when it responds to Defendants' letter, the

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<sup>3</sup> "April 16 Joint Status Report" refers to *Joint Status Report Regarding Discovery in the Revenue Bond Adversary Proceedings* (ECF Nos. 16455, 16560).

<sup>4</sup> (Ex. A (April 19, 2021 Ltr. from the Government to Defendants); Ex. B (April 19, 2021 Ltr. from Defendants to Government) (the "Defendants' April 19 Letter"); Ex. C (April 20, 2021 Ltr. from Government to Defendants); Ex. D (April 21, 2021 Ltr. from Defendants to Government); Ex. E (April 21, 2021 Ltr. from the Government to Defendants); Ex. F (April 21, 2021 Ltr. from Government to Defendants); Ex. G (April 23, 2021 Ltr. from Defendants to Government); Ex. H (April 26, 2021 Ltr. from Government to Defendants) (the "Government's April 26 Letter"); Ex. I (April 28, 2021 Ltr. from Defendants to Government); Ex. J (Apr. 29, 2021 Ltr. from Government to Defendants).)

Government strongly disagrees with Defendants' assertions. The Parties have not yet met-and-conferred with respect to Defendants' April 28 letter.

5. **Scope of Searches:** On April 6, 2021, the Government Entities provided Defendants with information concerning the searches undertaken by the Government Entities to locate responsive documents, as required by the Court's *Order on Defendants' Motion to Compel Document Discovery from the Government in the Revenue Bond Adversary Proceedings* (the "Motion to Compel Order," ECF No. 16236). On April 14, 2021, Defendants sent the Government a letter suggesting potential additional document custodians and search terms for the Government Entities. On April 19, 2021, following a meet-and-confer, Defendants sent the Government a narrowed list of proposed search terms. The Government is reviewing Defendants' request.

6. Defendants' April 14, 2021 letter also requested an update regarding when the Plaintiff (*i.e.*, the Board, in its capacity as representative of the Commonwealth) would provide disclosures regarding its searches. Defendants contend such disclosures are required under paragraph 1 of the Motion to Compel Order, which ordered the Government (a defined term that included both the Plaintiff and the Government Entities) to provide disclosures, so that Defendants would have an opportunity to suggest additional searches. Defendants state that they have not yet received disclosures from the Plaintiff concerning the searches it has undertaken, as the April 6, 2021 disclosure by its express terms was limited only to the Government Entities, and signed only by counsel for AAFAF; the Plaintiff has provided no similar disclosure. For its part, the Board did not perceive there to be a pending request for it to perform additional searches, beyond those conducted by the Government Entities. The Board is prepared to meet-and-confer on the subject, though it believes it has fully complied with its discovery obligations via the extensive searches undertaken by the Government Entities, working in close coordination

with both the Board and AAFAF. However, to be clear, the Board, in its capacity as Title III representative of the Commonwealth, worked with the Government Entities, including AAFAF, in determining what searches would be done by Commonwealth personnel both before and after issuance of the Motion to Compel Order. The searches undertaken by the Commonwealth, at the request of the Board, are coextensive with those already undertaken and identified.

7. **PRIFAS:** The Court ordered the Government to “provide information about other reports and data that can be generated using PRIFAS.” (Motion to Compel Order at 10.) On April 15, 2021, the Government asked Defendants to identify specific questions and inquiries regarding the PRIFAS data beyond what the Government had already produced. On April 19, 2021, Defendants outlined specific inquiries and requests regarding the PRIFAS data. (Ex. B (Defendants’ April 19 Letter).) The Government is reviewing Defendants’ requests, and in the meantime, on April 26, 2021, the Government produced additional documents that explain how PRIFAS is used.

8. **Privilege Log:** On April 26, 2021, the Government provided a document-by-document privilege log identifying three documents it withheld (or instructed others to withhold) as privileged. (Ex. H (Government’s April 26 Letter).) Defendants are following up with the Government to discuss the scope of the log.

## **B. Depositions**

9. On March 23, 2021, Defendants served notices of their intention to take certain Rule 30(b)(6) depositions. The Government timely served objections to the Rule 30(b)(6) deposition notices. The Parties have met-and-conferred. That process is ongoing. Defendants are awaiting the Government’s proposal on dates and locations that work for the witnesses.

10. As noted in the April 16 Joint Status Report, Defendants intend to notice the depositions of percipient witnesses, once the Parties conclude their discussions regarding

document custodians. As noted above, Defendants are awaiting the Government's response to Defendants' proposal regarding additional custodians. Defendants have not yet identified the witnesses whose depositions they intend to notice, and the Government reserves the right to object to any such deposition.

**C. Third-Party Discovery**

11. **Subpoenas Directed to Third-Parties:** Defendants have received responsive documents from approximately twenty subpoenaed third-parties, including banks, law firms, accounting firms, and, in the PRIFA Adversary Proceeding, rum producers. A few subpoenaed third-parties have not yet produced responsive documents. Defendants continue to meet-and-confer with several remaining banks, law firms, accounting firms, and rum producers to resolve open issues. The Government is not aware of any claimed open issues, and reserves all rights.

12. On a weekly basis, Defendants provide the Government with copies of the documents produced by the third-parties. Defendants state that they have also provided the formal written responses and objections of third-parties, and copies of all written communications Defendants have had with the law firms that the Government has identified as former law firms for the Government. The Government reserves its rights regarding whether Defendants have provided the Government with all relevant and requested communications they have had with the third-parties who have received subpoenas.

13. Yesterday, April 28, 2021, Defendants received a production regarding audit work papers from KPMG. The Government reviewed this production for privilege in advance of the production to Defendants and, on April 26, 2021, provided a log showing the sole document over which it asserted privilege. (Ex. H (Government's April 26 Letter).) Defendants' review of these materials is ongoing, and Defendants will raise follow-up requests as promptly as possible.

14. **Motion Practice:** Concurrently with this Joint Status Report, and pursuant to the Court's Scheduling Order dated April 23, 2021 (ECF No. 16571), Defendants are filing a motion to compel the production of documents, and the Government is filing a motion for protective order concerning subpoenas Defendants served on law firms that previously (or currently) represent the Government and its related entities.

15. The Parties continue to reserve their respective rights regarding all of the above.

## **II. PROPOSED NEXT STEPS**

16. In light of the status of the Parties' ongoing discussions, it is premature (as of the date of this report) for the Parties to submit any additional disputes to the Court for resolution beyond the motions being submitted today. The Parties would propose to continue to meet-and-confer and to submit a further status report on May 10, 2021.

Dated: April 29, 2021  
San Juan, Puerto Rico

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**CERTIFICATE OF SERVICE**

I hereby certify that on this same date a true and exact copy of this notice was filed with the Clerk of Court using the CM/ECF system, which will notify a copy to counsel of record.

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